

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

BERNARDO MARTINAJ, et al.,

Plaintiffs,

9:18-cv-257 (BKS/DJS)

v.

DONALD UHLER, et al.,

Defendants.

Appearances:

For Plaintiffs:

Alan D. Levine
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For Defendants:

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Konstandinos D. Leris
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Albany, NY 12224

Hon. Brenda K. Sannes, United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff Chase Burnett is one of sixteen Plaintiffs who commenced this action under 42 U.S.C. § 1983 alleging constitutional violations at Clinton Correctional Facility (“Clinton”) and Upstate Correctional Facility in the aftermath of the escape of inmates David Sweat and Richard Matt from Clinton in June 2015. (Dkt. Nos. 1, 40). On October 14, 2020, Defendants filed a suggestion of death as to Plaintiff Chase Burnett. (Dkt. No. 61). United States Magistrate Judge

Daniel J. Stewart granted Plaintiffs' repeated requests for ninety-day extensions of time to file a motion regarding substitution of the estate of Chase Burnett. (Dkt. Nos. 73, 80). On August 2, 2021, Magistrate Judge Stewart denied Plaintiffs' request for additional time to advise the Court of further developments but permitted Plaintiffs to file a motion under Fed. R. Civ. P. 25 for substitution on or before August 16, 2021. (Dkt. No. 96). On August 16, 2021, Plaintiffs' counsel did not file a motion for substitution, but instead filed another motion for an extension of time. (Dkt. Nos. 99, 100, 101). Defendants opposed Plaintiffs' motion. (Dkt. No. 102). On September 20, 2021, Magistrate Judge Daniel J. Stewart issued a Report-Recommendation recommending that Plaintiffs' motion for an extension of time to file a further motion under Fed. R. Civ. P. 25(a) be denied because Plaintiffs' counsel failed to make an adequate showing of excusable neglect, and that Plaintiff Burnett's claims be dismissed in accord with Fed. R. Civ. P. 25(a). (Dkt. No. 106). Magistrate Judge Stewart advised the parties that under 28 U.S.C. § 636(b)(1), they had fourteen days within which to file written objections to the report, and that the failure to object to the report within fourteen days would preclude appellate review. (*Id.* at 8). No objections to the Report-Recommendation have been filed.

As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Court adopts the Report-Recommendation in its entirety.

For these reasons, it is


ORDERED that the Report-Recommendation (Dkt. No. 106) is **ADOPTED** in its entirety; and it is further

ORDERED that Plaintiff Chase Burnett's claims are **DISMISSED** pursuant to Fed. R. Civ. P. 25(a)(1); and it is further

ORDERED that the Clerk serve a copy of this Order upon the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: October 12, 2021
Syracuse, New York


Brenda K. Sannes
Brenda K. Sannes
U.S. District Judge